

² The Board notes that, following the April 28, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP abused its discretion in denying authorization of an electric scooter and an electric lift chair.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On September 27, 1974 appellant, then a 39-year-old air traffic specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained high blood pressure and mixed neurosis causally related to stress at work. He first became aware of his condition and its relationship to his work on September 16, 1974. Appellant stopped work on September 16, 1974 and has not returned. OWCP accepted the claim for depressive reaction and hypertension, which was subsequently expanded to include hypertensive retinopathy, anxiety state, post-traumatic stress disorder (PTSD), coronary atherosclerosis, atrial fibrillation, impotence, left mild ventricular hypertrophy, cardiomegaly, congestive heart failure, atrial fibrillation, and other specified psychogenic malfunction arising from mental factors. It paid appropriate wage-loss compensation and medical benefits.⁴

In a report dated November 1, 2019, Dr. Adam Parker, an osteopath specializing in family medicine, noted that he was treating appellant for his hypertension and requested that OWCP accept congestive heart failure as work related. He noted that appellant had shortness of breath lying on his back, and that he needed to sleep upright in a chair with his legs propped up on a foot stool. Dr. Parker recommended that OWCP provide appellant an electric lift chair and light weight portable scooter, and he recommended appellant's placement in an assisted living facility. He reported that appellant had fallen attempting to get up from a chair due to his weakened condition. Dr. Parker also explained that appellant struggled using a walker and was short of breath walking from his waiting room into an examining room. For these reasons, he recommended an electric lift chair that would assist appellant in rising from the chair and would be suitable for sleeping. Dr. Parker also recommended an electric scooter that appellant should use if he had to walk more than 50 feet.

³ Docket No. 14-1314 (issued September 25, 2014); Docket No. 12-1825 (issued March 14, 2013); Docket No. 10-1727 (issued March 7, 2011); *Order Remanding Case*, Docket No. 09-966, (issued November 23, 2009); Docket No. 04-379 (issued February 11, 2005); Docket No. 02-506 (issued July 7, 2003).

⁴ On July 30, 1999 OWCP issued a loss of wage-earning capacity (LWEC) decision reducing appellant's wage-loss compensation based on his capacity to earn wages in the constructed position of studio cameraman. In a preliminary notice of overpayment of even date, it found that he forfeited compensation for the period August 7, 1987 through November 18, 1989 and December 22, 1989 through October 23, 1996 as he failed to report his work activity as a photographer resulting in an overpayment of \$427,540.26 for these periods. By decision dated October 24, 2001, OWCP's hearing representative affirmed the July 30, 1999 LWEC determination and finalized the July 30, 2009 overpayment determination.

In a February 24, 2020 letter, appellant requested that OWCP authorize the purchase of an electric lift chair as recommended by Dr. Parker. He attached estimates for two lift chairs and noted his preference.

Appellant, in a March 26, 2020 letter, again requested OWCP authorize purchase of a lift chair noting that it has become more difficult for him to rise from a sitting position.

In a report dated April 4, 2020, Dr. Nathan Hammel, an orthopedic specialist serving as an OWCP district medical adviser (DMA), noted that the proposed electric scooter and electric lift chair were intended to treat appellant's deconditioning which was due to multiple factors including contribution from aging and the accepted conditions. However, he opined that the devices were not medically necessary as appellant was moving into an assisted living facility. Dr. Hammel noted the level of care appellant would receive may preclude the need for these devices as he would have assistance or access to equipment which filled the same purpose. The DMA recommended that appellant's needs be reevaluated following his transition to an assisted living facility.

By decision dated April 28, 2020, OWCP denied authorization for an electric scooter and electric lift chair, finding that the medical evidence of record failed to establish that the equipment was medically necessary to address the effects of a work-related injury.

LEGAL PRECEDENT

Section 8103(a) of FECA⁵ provides for the furnishing of services, appliances, and supplies prescribed or recommended by a qualified physician which OWCP, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.⁶ In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority is that of reasonableness.⁷

In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.⁸ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.

⁵ 5 U.S.C. § 8103.

⁶ *Id.* See *O.M.*, Docket No. 20-0640 (issued April 19, 2021); *S.A.*, Docket No. 18-1024 (issued March 12, 2020).

⁷ *M.T.*, Docket 20-0321 (issued April 26, 2021); *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

⁸ See *D.K.*, Docket No. 20-0002 (issued August 25, 2020); *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *Debra S. King*, 44 ECAB 203, 209 (1992).

FECA provides that, if there is disagreement between an OWCP-designated physician and an employee's physician, OWCP shall appoint a third physician who shall make an examination.⁹ For a conflict to arise, the opposing physicians' viewpoints must be of virtually equal weight and rationale.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP accepted the claim for depressive reaction, hypertension, hypertensive retinopathy, anxiety state, PTSD, coronary atherosclerosis, atrial fibrillation, impotence, left mild ventricular hypertrophy, cardiomegaly, congestive heart failure, atrial fibrillation, and other specified psychogenic malfunction arising from mental factors.

Appellant's treating physician, Dr. Parker sought authorization for an electric chair lift and light weight portable electric scooter for appellant. He also recommended appellant's placement in an assisted living facility. Dr. Parker explained that appellant had fallen attempting to get up from his chair due to his weakened condition, that he struggled using a walker, and that he was short of breath walking short distances.

In contrast, Dr. Hammel, an OWCP DMA, opined that the devices were not medically necessary as appellant was being moved into an assisted living facility. He noted the level of care appellant would receive may preclude the need for these devices and recommended his needs be reevaluated following his transition to an assisted living facility.

As Dr. Hammel, an OWCP DMA, and Dr. Parker, appellant's attending physician, disagreed as to whether appellant's requested electric lift chair and electric scooter were medically warranted with appellant's move to an assisted living facility, the Board finds that there is a conflict in the medical opinion evidence. The case must therefore be remanded for referral to an impartial medical examiner pursuant to 5 U.S.C. § 8123(a). Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds this case is not in posture for a decision.

⁹ 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *L.C.*, Docket No. 20-866 (issued February 26, 2021); *B.I.*, Docket No. 18-0988 (issued March 13, 2020); *Shirley L. Steib*, 46 ECAB 309 (1994).

¹⁰ *L.C., id.*; *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 20, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board